

52.216-9

on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 69296, Dec. 31, 1996; 62 FR 12721, Mar. 17, 1997; 76 FR 31409, May 31, 2011]

52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated:

FIXED FEE—CONSTRUCTION (JUN 2011)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) below.

(c) The Contracting Officer shall withhold a reserve not to exceed 15 percent of the total fixed fee or \$100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 69296, Dec. 31, 1996; 62 FR 12721, Mar. 17, 1997; 76 FR 31409, May 31, 2011]

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

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INCENTIVE FEE (JUN 2011)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) *Target cost*, as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) *Target fee*, as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* (1) Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total incentive fee or \$100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.